LIBRARY
SUPREME COURT, U. S.

Supreme Court, U.S.
FILED
NOV 29 1971
E. ROBERT SEAVER, CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-504

THE NEWS-JOURNAL COMPANY, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

REPLY BRIEF OF PETITIONER

ARTHUR B. HANSON
RALPH N. ALBRIGHT, JR.
Attorneys for Petitioner
888 17th Street, N. W.
Washington, D. C. 20006

PRESS OF BYRON S. ADAMS PRINTING, INC., WASHINGTON, D. C.

IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-504

THE NEWS-JOURNAL COMPANY, *Petitioner*

v.

NATIONAL LABOR RELATIONS BOARD

Petition for a Writ of Certiorari to the United States Court of Appeals for the Third Circuit

---

REPLY BRIEF OF PETITIONER

Under November 11, 1971 date, the Solicitor General of the United States filed his brief for the National Labor Relations Board in opposition to the Petition. A thorough review of the brief finds little to comment upon with one exception. The Solicitor General devotes a substantial part of this short paper to endeavoring

to establish that a unionized employee, a member of the same union seeking representation here, had the authority to direct the activities of the questioned employees, namely, the route truck drivers. These references appear at pages 4, 5, 6 and 7 of the Solicitor General's ten page brief.

We respectfully call the court's attention to the cross-examination of District Manager Watts, whose direct testimony is so heavily relied upon by the Solicitor General:

> "Q. As a matter of fact, you know that you as a district manager can't give him any orders, do you not? A. This is true. I can't.
>
> Q. And if you have a complaint with him, if he isn't willing to accept it man to man, as you stated, you would recommend that he not drop them in the mud, and I sure agree with you that he shouldn't drop them in the mud. But your only recourse is to go on up through your supervisor and through the circulation manager, isn't it? A. Yes, sir, or contact the distribution manager, Mr. Allen." (J.A. 98)
>
> "Q. And so far as you're concerned, your sole relationship to the drop spot change is that you initiate it and send it up the line of command, in a sense, that you're working with, and it's up to somebody else to see that the trucker gets that, and that it's carried out? A. Yes, sir, that's true.
>
> * * * * * * * * *
>
> [499] Q. (By Mr. Hanson) What would be your recourse if the trucker didn't carry out the requested change for a drop spot change? A. Well I would promptly call the mail room and ask him if I got the drop spot change and if the plate had been changed—because it could have gotten lost from the supervisor—
>
> Q. This has happened, that they— A. It probably has; I don't recall if it happened to me, but it probably has happened.

Q. So if you called the mail room and found that it got there and he hadn't carried it out, what would you do then?

* * * * * * * * *

[500] The Witness: If the label did get changed and the driver did not make the drop spot change as the label read, I would see the driver and ask him why he didn't change it—if he didn't notice it or what. And if he was not cooperative, I would report him.

Q. (By Mr. Hanson) You'd report him to your supervisor? A. To my supervisor.

Q. Then it's up to them to do something further up the line, isn't it? A. Yes, sir.

Q. And in the case of Mr. Morris, when you had some reports on him, he finally was terminated by the circulation manager, wasn't he? A. Yes, sir.

Q. His contract was terminated, wasn't it? A. That's right." (J.A. 100-01)

Further, we respectfully call to the court's attention this colloquy appearing at page 487 of the Transcript:

Hearing Officer: I agree that the determination will ultimately be made by the Regional Director. However, based on the man's position and his experience, I will permit the opinion.

The Witness: To answer your question, I know that the News Journal Company, my employer, has considered them as independent contractors, but I don't know what the men have considered themselves.

Q. (By Mr. Hanson) I didn't ask you that. I asked you what you consider them to be? A. And as a member of the employee staff I considered them as independent contractors.

We respectfully submit that, in light of this uncontroverted testimony on cross examination, the So-

licitor General's reliance upon the direct testimony is of no probative value whatsoever and should be disregarded.

Respectfully submitted,

ARTHUR B. HANSON
RALPH N. ALBRIGHT, JR.
Attorneys for Petitioner
888 17th Street, N. W.
Washington, D. C. 20006